



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 5, 1993

Mr. Therold I. Farmer  
Walsh, Anderson, Underwood, Schulze & Aldridge, P.C.  
Attorneys At Law  
P.O. Box 2156  
Austin, Texas 78768

OR93-601

Dear Mr. Therold:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 20700.

The Aransas Pass Independent School District (the "district") received an open records request for, *inter alia*, the following:

A copy of the list of all teachers who were eligible for placement on Career Ladder Level III or Career Ladder Level II for the 1992-93 school year, and their ranked evaluation scores.

A copy of the list of all teachers who were placed and paid for Career Ladder Level III or Career Ladder Level II for the 1992-93 school year, and their ranked evaluation scores.

You contend that the lists of teachers coupled with their respective Career Ladder evaluation scores are protected from public disclosure by sections 552.101, 552.102, and 552.111 (former sections 3(a)(1), 3(a)(2), and 3(a)(11)) of the Open Records Act.

---

<sup>1</sup>The 73rd Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Section 552.102(a) of the act protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection, however, is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). The requested information reveals the Career Ladder scores the teachers earned for the performance of their responsibilities as public school teachers, and as such cannot be deemed to be outside the realm of public interest. See Open Records Decision No. 444 (1986) (public has a legitimate interest in knowing the reasons for the dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here.

You express concern that the release of the teachers' evaluation scores would violate their liberty interests under the Fourteenth Amendment of the United States Constitution. We note, however, that

[t]o establish a liberty interest, an employee must demonstrate that his governmental employer has brought *false charges* against him that 'might seriously damage his standing and associations in his community,' or that impose a 'stigma or other disability' that forecloses 'freedom to take advantage of other employment opportunities.' *Board of Regents v. Roth*, 408 U.S. 564 (1972).

*Wells v. Hico Indep. Sch. Dist.*, 736 F.2d 243, 256 (5th Cir. 1984) (emphasis added; parallel citations deleted). It is not apparent to us, however, that a teacher's evaluation score constitutes a "false charge." Consequently, the release of this information would not implicate the teachers' Fourteenth Amendment interests.<sup>2</sup> Furthermore, even if it did,

---

<sup>2</sup>We further note that information regarding public employees may not be withheld under section 552.101 merely because the information is false. See Open Records Decision No. 579 (1990) (section 552.101 does not protect false light privacy interests); see also *Diamond Shamrock Refining and Marketing*

we are aware of no authority for the proposition that information may be withheld under section 552.101 on this basis.

Section 552.111 of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . (Emphasis in original.)

The information at issue here does not rise to the level necessary to invoke the protection of section 552.111. The requested lists do not address policy issues before the district but rather merely rank the teachers according to their respective scores, a routine internal personnel matter. Section 552.111 does not protect this type of information; accordingly, the district must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/RWP/rho

Ref.: ID# 20700  
ID# 20745

---

*Company v. Mendez*, 844 S.W.2d 198 (Tex. 1992) (to the extent that tort of false light invasion of privacy exists in this state, the tort requires a showing of actual malice as an element of recovery).

cc: Mr. Erick Schaudies  
Texas State Teachers Association  
316 West 12th Street  
Austin, Texas 78701  
(w/o enclosures)